REMARKS

Applicant thanks the Examiner for conducting a telephone interview concerning the issues of the pending office action. The issues discussed during the telephone interview are included in the remarks below.

Claims 1-28 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, or otherwise lacks patentable utility. Applicant has amended independent claim 1 to describe the invention as being a method to be performed by one or more processors. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 30-32 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 30-32 to correct certain defects. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0028548 of Nye in view of U.S. Patent Application Publication No. 20020040395 of Davis, *et al.* Nye discloses a method that allows a developer to add complex dependency logic to an existing database without having to modify the underlying structure of the database. (Nye, Abstract). Nye discloses that the invention can be used in a subscription service environment by having a database that stores records corresponding to customers that subscribe to some provided product or service. (Nye, ¶ 44). Groups of customers may acquire a status based on the date that a renewal or service is requested or based on a specific promotion or offer in effect when the customer subscribed. *Id.* Nye discloses that customers may be given a free six-month subscription to an online newsletter, after six months pass, those that have subscribed are placed in a paying subscriber category; those who cancel after 6 months or do not subscribe are placed in the cancelled subscription category. (Nye, ¶ 46). Nye discloses that an administrator may decide to send a thank you email to paying subscribers to thank them for subscribing or for offering additional

services. (Nye, ¶ 49).

Davis discloses a method for monitoring client interaction with a resource downloaded from a server in a computer network, downloading a file, using the client to specify an address of a first executable program located on a second server, the first executable program including a software timer for monitoring the amount of time the client spends interacting with and displaying the file downloaded from the first server. (Davis, Abstract). Davis discloses that the method is applicable to subscription services. (Davis, ¶ 32).

Applicant claims, *inter alia*, providing access to an online subscription level at a first level during a subscription period and after expiration of the subscription period, providing the subscriber with access to online subscription service at a level that is lower than the first level of service without terminating the access. (Claims 1, 29 and 33).

To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

Applicant respectfully asserts that a *prima facie* case of obviousness has not been presented because the cited prior art, either alone or in combination, fails to teach or suggest all the claim limitations of Applicant's claimed invention. For example, neither Nye nor Davis teach or suggest that *after* expiration of the subscription period, access to the subscription *is not terminated* but just provided at a level of service *that is lower than* the pre-expiration level of service. Applicant specifically claims that access to the subscription is not terminated, only that the level of service is reduced. Applicant can find no such teaching or suggestion in the cited prior art.

Therefore, because the cited prior art fails to teach or suggest each and every limitation claimed by Applicant, Applicant respectfully requests reconsideration and withdrawal of the rejection of independent claims 1, 29 and 33 as well as all claims depending therefrom.

Regarding claims 3-5, 13-15, 35-36 and 44, Applicant claims, *inter alia*, gradually reducing the level of service during the post-expiration period and notifying the subscriber of the lower service level and of the service level to be reduced. Applicant respectfully asserts that neither of the cited

prior art references teach or suggest this claimed limitation.

The Examiner cites Nye at ¶ 99 for this teaching or suggestion. (See Office Action, p. 5, ¶ 15). However, Nye teaches therein that if the subscription of a subscriber is expired, then the subscriber will be sent a newsletter. This reference provides no teaching or suggestion that (1) the subscriber's access to the subscription is not terminated after the subscription expires, (2) the service level for accessing the subscription is gradually reduced to a reduced level and (3) the subscriber is notified of the lower service level of access to the subscription.

Therefore, because the cited prior art fails to teach or suggest each and every limitation claimed by Applicant, Applicant respectfully requests reconsideration and withdrawal of the rejection of dependent claims 3-5, 13-15, 35-36 and 44.

Regarding claims 2, 24, 26, 30-32 and 37, Applicant claims parameters of the level of service that can be provided accessing the subscription. The Examiner confirms that the cited prior art does not teach a selection of service parameters such as download rate and color formatting. (Office Action, p.4, ¶ 13). The Examiner continues with taking Official Notice that these parameters are well known in the art and were utilized as part of different service levels in the art at the time the invention was made.

MPEP § 2144.03 provides that if the applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution. Thus, an applicant is charged with rebutting the well known statement in the next reply after the office action in which the well known statement was made.

Therefore, pursuant to MPEP § 2144.03, Applicant rebuts and challenges the well known statement appearing in the pending office action.

Applicant respectfully asserts that all claims are now in condition for allowance and respectfully requests that a Notice of Allowance be issued. If the Examiner determines that a telephone conference would expedite the examination of this pending patent application, the Examiner is invited to call the undersigned attorney at the Examiner's convenience. In the event

there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/IBM-0012 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,

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